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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MPA - 175935

PRELIMINARY RECITALS

Pursuant to a petition filed on July 21, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability regarding Medical Assistance (MA), a hearing was held on August 16, 2016, by telephone.

The issue for determination is whether the petitioner is entitled to medical assistance reimbursement for Child/Adolescent Day Treatment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Jo Ellen Crinion

Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES #) is a resident of Douglas County.

2. On April 19, 2016, the petitioner with [REDACTED] requested 13 weeks of Child/Adolescent Day Treatment (CADT) at a cost of \$26,000. The department returned the request and sought more information on May 2, 2016. [REDACTED] resubmitted its request on May 6, 2016, amending it to 26 weeks of treatment at a cost of \$52,000. The department returned the request for more information on May 19, 2016. The petitioner resubmitted its request on June 2, 2016. The department denied the request on June 20, 2016.
3. The petitioner is a nine-year-old girl whose primary diagnosis is post-traumatic stress disorder.
4. The petitioner was born with methamphetamine in her system, has been removed from her mother's home at least twice, has lived in several households, and now resides in a stable home with her mother's sister, who is also the petitioner's guardian.
5. The petitioner was physically and mentally abused at her mother's home. There is a no-contact restraining order in place against her mother.
6. The petitioner has had a history of nightmares, but these have recently stopped.
7. The petitioner throws desks, chairs, and smaller items in the classroom.
8. The petitioner makes quick connections with children her age but seldom maintains friendships.
9. The petitioner was suspended from school for refusing to do her school work and her reaction to being told to do so. When asked to do something, she will scream, "No" and "I'm NOT going to do it." She will then display one of two emotions. The first is extreme silliness or happiness, which she exhibits by doing things such as summersaults, skipping around the room, lying on the floor, and spinning around while making noises and disrupting other students. The alternate emotion is extreme anger, which she exhibits by screaming, throwing objects across the room, pushing over chairs, hiding under tables, storming around the room leaving the room without permission, running away from adults, hiding throughout the school, and doing other similar actions.
10. Although an IQ test indicates that the various aspects of the petitioner's intelligence are mostly in the average range, her academic functioning is mostly in the 1st and 2nd percentile. Her absences from school contribute to her poor academic skills and performance.
11. The petitioner is receiving mental health services but no other services such as social services, child protective services, juvenile justice services, or special education.
12. The petitioner is not likely to need a second service if she does not receive CADT.

DISCUSSION

The petitioner seeks medical assistance reimbursement for Child/Adolescent Day Treatment (CADT) from [REDACTED]. The department considers CADT a "HealthCheck—Other Service" covered under Wis. Admin. Code, § DHS 107.22(4). HealthCheck—Other Service is a catch-all category applying to any service described in the definition of "medical assistance" found at 42 USC 1396d(a). CADT guidelines refer to Wis. Admin. Code, Chapter DHS 40, which specifically covers children under 18, so those provisions are relevant in determining whether to approve the services. See *Child/Adolescent Day Treatment Handbook*, found online at <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=83&s=2&c=61&nt=Program+Requirements>. Like any medical assistance service, it must be medically necessary, cost-effective, and an effective and appropriate use of available services. It must also meet the "limitations imposed by pertinent...state...interpretations." Wis. Admin. Code § DHS 107.02(3)(e)1.,2.,3.,6., 7, and 9. Wis. Admin. Code. A service is medically necessary if it is a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. HFS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code § DHS 101.03(96m)

The department rarely appears in person or by telephone at CADT hearings and instead submits a written statement to the petitioner and the Division of Hearings and Appeals explaining its position. In this matter, the Division of Hearings and Appeals did not receive the department's submission until the afternoon before the hearing, and the petitioner did not receive it until after the hearing was over. This was too late for either me to consider, or [REDACTED] and the petitioner's representatives to address, the points raised in the letter. It was at least the third time in the last two years that this consultant submitted her position letter too late to be of value at the hearing. In *MPA/160598* she submitted her request the day before the hearing and in *MPA/169960* she submitted it after the hearing. The letters themselves are difficult to read because she relies heavily on block quotations that can run several pages. (*DHA Decision MPA-175127* pointed out that she had a 4 ½-page long block quotation.) Because the letter is too late to be of use at the hearing, I will not consider its arguments except those pertaining to the department's contention that the petitioner's provider cannot be reimbursed because the petitioner received the services before the department approved them.

The consultant, Jo Ellen Crinion, has long argued that providers cannot be reimbursed if they begin treating a recipient before the department approves the service, as [REDACTED] did here. The legal foundation for her argument is found in Wis. Admin. Code, § DHS 107.02(3)(c), which states: "If prior authorization is not requested and obtained before a service requiring prior authorization is provided, reimbursement shall not be made except in extraordinary circumstances such as emergency cases where the department has given verbal authorization for a service." In her more recent letters, she also argues that, because the department has up to 20 working days to rule on completed requests, providers must submit those requests at least that many days before the services will begin.

The rule denying reimbursement for services received before the provider obtained authorization is not absolute. Wis. Admin. Code, § DHS 106.03(4)(a), which is found in the chapter in the administrative code pertaining to the provider's rights and responsibilities, allows an exception to this general rule "[w]here the provider's initial request for prior authorization was denied and the denial was either rescinded in writing by the department or overruled by an administrative or judicial order." In the 19 years I have been reviewing the department's cases, no consultant except Ms. Crinion has argued that

services cannot be reimbursed if they begin before the department grants the request. Rather, the other consultants found it sufficient if the request was submitted before the services began. Of course, any provider who begins treatment before it is actually approved runs the risk of not being paid because the request can still be denied on the merits.

Furthermore, Ms. Crinion's contention that the department has 20 working days to rule on a request is misleading. She is referring to Wis. Admin. Code, § DHS 107.02(3). This regulation requires the department to "act on 95% of requests for prior authorization within 10 working days and on 100% of requests for prior authorization within 20 working days from the receipt of all information necessary to make the determination." In another words, the department is expected to act within 10 days except in rare circumstances. [REDACTED] first submitted its request for the petitioner on April 19, 2016, and the department sent it back for more information on May 2, 2016, or exactly 10 working days later. [REDACTED] submitted more information on May 6, 2016, but the department again found this inadequate and requested additional information on May 19, 2016. This was 11 working days later. [REDACTED] submitted the requested information on June 2, 2016. The department reviewed this information and then denied the request on June 20, 2016, which was 12 working days later. Thus, from the date it received all of the information it required, the department's decision took more than the 10 working days in which it is expected to make 95% of its decisions. In addition, while there is no specific regulation requiring it to request additional information within 10 or 20 working days, the requirement that it make its decision within that period is meaningless if it does not request more information diligently.

The department has not been prejudiced by the fact that services began before it approved them. It has had the full time allotted by CADT policies and regulations to review the request on its merits, [REDACTED]'s decision to begin services does not improve its chances of prevailing in its appeal. It will not receive any payment from medical assistance unless it does prevail, and that payment will be the same whether it waits or doesn't wait to provide services. The only practical difference that would occur if the provider waited to provide services is that if the services were ultimately approved the recipient would wait longer for necessary services and the provider would wait longer to get paid. Neither are legitimate outcomes. Because of this, I will not deny the request on the ground that it is late and instead will review it on its medical merit.

The pertinent interpretation of the requirements that must be met to receive adolescent day services is found at *Wisconsin Medicaid and BadgerCare Update* No. 96-20. It states:

Child/adolescent day treatment services are covered when the following are present:

- Verification that a HealthCheck screen has been performed by a valid HealthCheck screener dated not more than one year prior to the requested first date of service (DOS).
- A physician's prescription/order dated not more than one year prior to the requested first DOS.
- Evidence of an initial multidisciplinary assessment that includes all elements described in HFS 40.09, Wis. Admin. Code, including a mental status examination and a five-axis diagnosis.
- The individual meets one of the following criteria for a determination of "severely emotionally disturbed" (SED):
 - Is under age 21; emotional and behavioral problems are severe in degree; are expected to persist for at least one year; substantially interfere with the individual's functioning in his or her family, school, or community and with his or her ability to cope with the ordinary demands of life; and cause the individual to need services

- from two or more agencies or organizations that provide social services or treatment for mental health, juvenile justice, child welfare, special education, or health.
- Substantially meets the criteria previously described for SED, except the severity of the emotional and behavioral problems have not yet substantially interfered with the individual's functioning but would likely do so without child/adolescent day treatment services.
- Substantially meets the criteria for SED, except the individual has not yet received services from more than one system and in the judgment of the medical consultant, would be likely to do so if the intensity of treatment requested was not provided.
- A written multidisciplinary treatment plan signed by a psychiatrist or clinical psychologist as required in HFS 40.10, Wis. Admin. Code, that specifies the services that will be provided by the day treatment program provider, as well as coordination with the other agencies involved.
- Measurable goals and objectives that are consistent with the assessment conducted on the child and written in the multidisciplinary treatment plan.
- The intensity of services requested are justifiable based on the psychiatric assessment and the severity of the recipient's condition.

The initial assessment must include an evaluation of the recipient's "mental health status by a psychiatrist or a clinical psychologist and *the clinical coordinator of the program.*" Wis. Admin. Code, § DHS 40.09(2)(c)

The petitioner has the burden of proving by the preponderance of the credible evidence that the requested therapy is necessary, and this burden does not shift to the department because it did not submit its statement on time.

The petitioner is a nine-year-old girl diagnosed with post-traumatic stress disorder. She was born with methamphetamine in her system, has been removed from her mother's home at least twice, has lived in several households, and now resides in a stable living situation with her aunt (her mother's sister) and uncle; her aunt is also her guardian. While living with her mother, she was physically abused several times. There is currently a no-contact order that prevents her mother from seeing her.

Although her primary diagnosis is PTSD, the symptoms one generally associates with that problem have alleviated somewhat. Now that she lives in a stable situation with her aunt and uncle, her nightmares and bedwetting are reported to have stopped. Instead, the primary problem is her behavior. When asked to do something at school, she usually refuses will scream, "No" and "I'm NOT going to do it." She will then display one of two emotions. The first is extreme silliness or happiness, which she exhibits by doing things such as summersaults, skipping around the room, lying on the floor, and spinning around while making noises and disrupting other students. The alternate emotion is extreme anger, which she exhibits by screaming, throwing objects across the room, pushing over desks and chairs, hiding under tables, storming around the room leaving the room without permission, running away from adults, hiding throughout the school, and doing other similar actions. This, not surprisingly, has led to academic problems. Although an IQ test indicates that the various aspects of her intelligence are mostly in the average range, her academic functioning is mostly in the 1st and 2nd percentile. Her frequent absences from school also contribute to her poor academic skills and performance.

This question is whether the petitioner and [REDACTED] have met the requirements necessary to receive CADT. They have verified that a HealthCheck screen has been performed and there is a physician's prescription. [REDACTED] did not perform its own multidisciplinary assessment but instead relied on one recently created by another mental health provider. Assessments are not interchangeable because different providers and programs address different problems in different ways, which means that they may have to obtain different information in their assessments. I understand that the older assessment may be adequate to determine the petitioner's problems and what direction the therapy

should go, but the program's rules specifically require that the assessment include an evaluation by the clinical coordinator of the program. Thus, the request could be denied on that ground alone.

In addition, while it appears she has severe emotional and behavioral problems that substantially interfere with her ability to function within her family and school and her ability to cope with the ordinary demands of life, she does not receive services from two agencies or organizations that provide social services or treatment for mental health, juvenile justice, child welfare, special education, or health. She contends that she *will* require services from two systems if she does not receive CADT. This is difficult to prove because if she will need two services, one wonders why isn't she receiving two services now. What she must demonstrate is (1) that her behavior is deteriorating to the point that she will require a second service and (2) that if she receives CADT, this deterioration will be arrested enough to prevent the need for a second service. The analysis of these two points must be performed consistent with medical assistance guidelines found in the administrative code, including that it be cost-effective.

The petitioner's behavior has appeared to deteriorate in the last year, but some of her symptoms have gotten better. She was suspended from school briefly in March, but five months later in August when the hearing was held, her school had not placed her in special education. This suggests that, although her behavior may have deteriorated, those with the authority to do so have not seen the need to require a new service. In view of these facts, any finding that the petitioner will require a second service is speculative. Thus, she has not established by the preponderance of the credible evidence that she will require a second service.

Even if one assumes that without some further intervention her behavior will deteriorate to the level that a second service will be required, she has not established that CADT is the intervention that will prevent the deterioration. CADT is meant to be intensive intervention that leads to fairly quick, meaningful results. Because of this and the program's high cost—\$2,000 per week—the department rarely approves more than two 13-week courses of treatment. Yet [REDACTED] indicated that the petitioner will require three 13-week courses of treatment. This is consistent with what it has said is necessary in most of the hearings I have held with it. I question the effectiveness of intensive treatment that the provider itself contends will rarely bear results in less than nine months and until \$78,000 is spent on that treatment.

I also question whether, in the petitioner's case in particular, this long course of treatment will aggravate rather than mitigate perhaps the most serious symptom of her mental health problems, the gap between her academic performance and what one would expect from someone with her intelligence. CADT services run Monday through Friday from 8 a.m. until 2:00 p.m., which effectively ends her school attendance. It is difficult to see how her academic performance would improve if she misses this entire school year.

Finally, the petitioner has not established that whatever benefits CADT provides will be cost-effective. If her disruptions in school do prevent her from learning anything, the school special education program should be able to provide mental health services and an alternative curriculum that meets her needs. I am aware that this would constitute a second service, but as a practical matter, she cannot attend both school and CADT this year.

To receive CADT, the petitioner must meet all of the requirements pertaining specifically to the program that are listed in *Wisconsin Medicaid and BadgerCare Update* No. 96-20 and the general medical assistance rules found in the Wisconsin administrative code. Her provider has not submitted a proper assessment, she has not established that she will require services from two agencies or organizations if she does not receive the requested CADT, and she has not established that it is a cost-effective and medically necessary means of treating her mental health problems. Therefore, I find that the department properly denied authorization for those services.

CONCLUSIONS OF LAW

The requested CADT services are not cost-effective or medically necessary.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

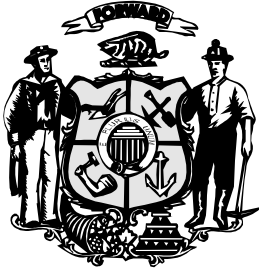
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 11th day of October, 2016

\s_____
Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 11, 2016.

Division of Health Care Access and Accountability